

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **ROB F. SCHUSTER, M.D.**

4 Holder of License No. 35558
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-14-0110A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR LETTER
OF REPRIMAND AND PROBATION**

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on
8 June 3, 2015. Rob F. Schuster, M.D. ("Respondent"), appeared with legal counsel, Mr.
9 Stephen Myers, before the Board for a formal interview pursuant to the authority vested in
10 the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact, Conclusions
11 of Law and Order for a Letter of Reprimand and Probation after due consideration of the
12 facts and law applicable to this matter.

13 **FINDINGS OF FACT**

14 1. The Board is the duly constituted authority for the regulation and control of
15 the practice of allopathic medicine in the State of Arizona.

16 2. Respondent is the holder of license number 35558 for the practice of
17 allopathic medicine in the State of Arizona.

18 3. The Board initiated case number MD-14-0110A after receiving a complaint
19 from a pharmacist alleging that Respondent attempted to fill a prescription for Dianabol, a
20 drug banned by the FDA. The prescription appeared to have been authorized by licensed
21 physician SB.

22 4. The complainant reported that after consultation with SB's medical assistant,
23 the prescription request was cancelled. Respondent's employer ("the Hospital") was
24 subsequently notified of the incident. The Hospital interviewed SB, who admitted to
25 allowing Respondent to use her DEA number to write himself a prescription for Ambien
sometime during the summer of 2013. SB indicated that other than the one-time

1 authorization, she was unaware of any other use of her DEA number until she reviewed
2 her recorded prescribing history.

3 5. During the course of the Board's investigation, SB submitted correspondence
4 to the Board reporting Respondent's conduct, stating that she did not authorize the use of
5 her DEA number and was unaware that Respondent had ordered the medication under
6 her name.

7 6. Respondent resigned while under investigation by the Hospital.

8 7. After having been notified by the Board of its investigation, Respondent
9 presented for an informal interview with Board staff. Respondent admitted to the use of
10 SB's DEA number to obtain medications for himself between August of 2013 and January
11 of 2014 without SB's expressed consent.

12 8. Respondent underwent an assessment with the Board's Physician Health
13 Program ("PHP") Contractor, and it was recommended that he enroll in PHP for a period of
14 two years with an additional requirement that he abstain from the use of anabolic and
15 abusable steroids. As a result of the PHP Contractor's assessment and recommendations,
16 Respondent entered into an Interim Consent Agreement for PHP participation, effective
17 March 19, 2014.

18 9. On April 30, 2014, Respondent tested positive for Ethyl Sulfate, a metabolite
19 of alcohol. A PEth test of May 14, 2014 was also positive for Phosphatidyl Ethanol,
20 another metabolite of alcohol. Pursuant to the terms of his Interim Consent Agreement for
21 PHP participation, Respondent was to abstain from alcohol consumption.

22 10. Respondent admitted to the PHP Contractor that he consumed alcohol in
23 May, and stated that he did not "get" the meaning of the Interim Consent Agreement. As a
24 result of the incident, Respondent was referred for a comprehensive evaluation.

1 11. On May 21, 2014, Respondent presented to Promises Treatment Center
2 ("Promises") for a comprehensive evaluation. Promises was unable to determine whether
3 Respondent's behavior was defiant versus true alcohol dependence. Promises
4 recommended that the evaluation be continued as well as treatment for a minimum of
5 thirty days to help bolster Respondent's understanding of his alcohol use disorder. On July
6 19, 2014, Respondent was discharged from Promises with staff approval. Promises'
7 evaluation concluded that Respondent still held the diagnoses of steroid abuse and
8 alcohol abuse, and continuation of abuse-track monitoring was recommended.

9 12. According to the PHP Contractor, Respondent's consumption of alcohol in
10 violation of his Interim Consent Agreement did not represent significant non-compliance.
11 The PHP Contractor recommended that Respondent continue to be monitored under his
12 Interim Consent Agreement for PHP Participation dated March 19, 2014.

13 13. During the Board's investigation into Respondent's alleged conduct,
14 correspondence was received from a hospital indicating that as part of Respondent's initial
15 credentialing application, he failed to disclose that he was subject to an Interim Consent
16 Agreement with the Board. Pursuant to the Interim Consent Agreement, Respondent is
17 required to provide a copy of the Agreement to all current and future employers and all
18 hospitals and free standing surgery centers where Respondent has privileges.

19 14. At a formal interview on the matter, the PHP Contractor reported that
20 Respondent has since been compliant with the terms and conditions of his Interim
21 Consent Agreement, including monitoring and abstinence from using alcohol and
22 controlled substances.

23 15. Also at the formal interview, Respondent testified that he has engaged in the
24 therapeutic process offered by PHP, has a new understanding of the importance of work-
25 life balance and is committed to his recovery.

1 CONCLUSIONS OF LAW

2 a. The Board possesses jurisdiction over the subject matter hereof and over
3 Respondent.

4 b. The conduct and circumstances described above constitute unprofessional
5 conduct pursuant to A.R.S. § 32-1401(27)(g) ("[U]sing controlled substances except if
6 prescribed by another physician for use during a prescribed course of treatment.").

7 c. The conduct and circumstances described above constitute unprofessional
8 conduct pursuant to A.R.S. § 32-1401(27)(j) ("[P]rescribing, dispensing or administering
9 any controlled substance or prescription-only drug for other than accepted therapeutic
10 purposes.").

11 d. The conduct and circumstances described above constitute unprofessional
12 conduct pursuant to A.R.S. § 32-1401(27)(r) ("[V]iolating a formal order, probation, consent
13 agreement or stipulation issued or entered into by the board or its executive director under
14 the provisions of this chapter.").

15 e. The conduct and circumstances described above constitute unprofessional
16 conduct pursuant to A.R.S. § 32-1401(27)(t) ("[K]nowingly making any false or fraudulent
17 statement, written or oral, in connection with the practice of medicine or if applying for
18 privileges or renewing an application for privileges at a health care institution.").

19 ORDER

20 IT IS HEREBY ORDERED THAT:

21 1. Respondent is issued a Letter of Reprimand.

22 2. Respondent shall promptly enroll in and participate¹ in the Board's Physician
23 Health Program ("PHP") for a period of **two years**.

24 _____
25 ¹ Respondent's PHP participation is retroactive to July 19, 2014.

1 3. Respondent shall not consume alcohol or any food or other substance
2 containing poppy seeds or alcohol.

3 4. Respondent shall not take any illegal drugs or mood altering medications.

4 5. All prescriptions for controlled substances shall be approved by the PHP
5 prior to being filled except in an *Emergency*. Controlled substances prescribed and filled
6 in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no
7 *Medication* unless Respondent's Primary Care Physician ("PCP") or other health care
8 provider to whom the PCP refers Respondent prescribes and the PHP approves the
9 *Medication*. Respondent shall not self-prescribe any *Medication*. "Medication" means a
10 prescription-only drug, controlled substance, and over-the counter preparation, other than
11 plain aspirin, plain ibuprofen, and plain acetaminophen. "Emergency" means a serious
12 accident or sudden illness that, if not treated immediately, may result in a long-term
13 medical problem or loss of life.

14 6. Respondent shall submit to random biological fluid, hair and nail testing for
15 two years from the date of this Order (as specifically directed below) to ensure compliance
16 with PHP.

17 7. Respondent shall provide the PHP in writing with one telephone number that
18 shall be used to contact Respondent on a 24 hour per day/seven day per week basis to
19 submit to biological fluid, hair and/or nail testing to ensure compliance with PHP. For the
20 purposes of this section, telephonic notice shall be deemed given at the time a message to
21 appear is left at the contact telephone number provided by Respondent. Respondent
22 authorizes any person or organization conducting tests on the collected samples to
23 provide testing results to the PHP. Respondent shall comply with all requirements for
24 biological fluid, hair and/or nail collection. Respondent shall pay for all costs for the testing.

25

1 8. Respondent shall provide the PHP with written notice of any plans to travel
2 out of state.

3 9. Respondent shall successfully complete a PHP approved 36 hour
4 alcohol/drug awareness education class.

5 10. Respondent provides full consent for the PHP to discuss the Respondent's
6 case with the Respondent's PCP or any other health care providers to ensure compliance
7 with PHP.

8 11. The relationship between the Respondent and the PHP is a direct
9 relationship. Respondent shall not use an attorney or other intermediary to communicate
10 with the PHP on participation and compliance issues.

11 12. Respondent shall be responsible for all costs, including costs associated with
12 participating in PHP, at the time service is rendered or within 30 days of each invoice sent
13 to the Respondent. An initial deposit of two months PHP fees is due upon entering the
14 program. Failure to pay either the initial PHP deposit or monthly fees 60 days after
15 invoicing will be reported to the Board by the PHP and may result in disciplinary action up
16 to and including revocation.

17 13. Respondent shall immediately provide a copy of this Order to all employers,
18 hospitals and free standing surgery centers where Respondent currently has or in the
19 future gains or applies for employment or privileges. Within 30 days of the date of this
20 Order, Respondent shall provide the PHP with a signed statement of compliance with this
21 notification requirement. Respondent is further required to notify, in writing, all employers,
22 hospitals and free standing surgery centers where Respondent currently has or in the
23 future gains or applies for employment or privileges of a violation of this Order.

24 14. In the event Respondent resides or practices as a physician in a state other
25 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that

1 state's medical licensing authority or medical society. Respondent shall cause the
2 monitoring state's program to provide written quarterly reports to the PHP regarding
3 Respondent's attendance, participation, and monitoring. The monitoring state's program
4 and Respondent shall immediately notify the PHP if Respondent is non-compliant with any
5 aspect of the monitoring requirements or is required to undergo any additional treatment.

6 15. The PHP shall immediately notify the Board if Respondent is non-compliant
7 with any aspect of the monitoring requirements or this Order.

8 16. In the event of the use of drugs or alcohol by Respondent in violation of this
9 Order, Respondent shall promptly enter into an Interim Consent Agreement for Treatment
10 at a PHP approved facility. Following the successful conclusion of treatment, Respondent
11 shall enter into an Interim Consent Agreement for full participation in PHP. In no respect
12 shall the terms of this paragraph restrict the Board's authority to initiate and take
13 disciplinary action for violation of this Order.

14 17. Prior to the termination of Probation, Respondent must submit a written
15 request to the Board for release from the terms of this Order. Respondent's request for
16 release will be placed on the next pending Board agenda, provided a complete submission
17 is received by Board staff no less than 14 days prior to the Board meeting. Respondent's
18 request for release must provide the Board with evidence establishing that he has
19 successfully satisfied all of the terms and conditions of this Order. The Board has the sole
20 discretion to determine whether all of the terms and conditions of this Order have been
21 met or whether to take any other action that is consistent with its statutory and regulatory
22 authority.

23 18. This Order supersedes any and all Consent Agreements previously entered
24 into by Respondent and the Board regarding this matter.

1 19. The Board retains jurisdiction and may initiate new action against
2 Respondent based upon any violation of this Order.

3 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

4 Respondent is hereby notified that he has the right to petition for a rehearing or
5 review. The petition for rehearing or review must be filed with the Board's Executive
6 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
7 petition for rehearing or review must set forth legally sufficient reasons for granting a
8 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after
9 date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed,
10 the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

11 Respondent is further notified that the filing of a motion for rehearing or review is
12 required to preserve any rights of appeal to the Superior Court.

13
14 DATED AND EFFECTIVE this 6th day of August, 2015.

15
16 ARIZONA MEDICAL BOARD

17 By Patricia E. McSorley
18 Patricia E. McSorley
19 Executive Director

20 EXECUTED COPY of the foregoing mailed
21 this 6th day of August, 2015 to:

22 Stephen W. Myers
23 Myers & Jenkins
24 One East Camelback Road Suite 500
25 Phoenix, AZ 85012
Attorney for Respondent

1 ORIGINAL of the foregoing filed
2 this 6th day of August, 2015 with:

3 Arizona Medical Board
4 9545 E. Doubletree Ranch Road
5 Scottsdale, AZ 85258

6 Mary Baker
7 Board Staff
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